

REMARKS

Claims 1-61 were pending in the subject application. Claims 58-61 have been canceled without prejudice to Applicant's right to pursue the subject matter of these claims in a divisional application. Claims 2, 3, 7-10, 15, 16, 19, 21, 22, 24, 26, 27, 29, 30, 36, 43, 50, 54 and 57 have been amended to clarify the claimed subject matter. Claims 62 and 63 have been added. Support for these claims may be found as follows: claim 62, in originally-filed claims 5, 10 and 15; and claim 63, in originally-filed claims 33 and 34. This amendment does not introduce any new matter. Entry of this amendment is requested so that claims 1-57 and 62-63 will be pending.

The Examiner has required restriction between claims 1-57 and 58-61. Claims 1-57 are allegedly drawn to methods for treating ischemic tissues comprising administering cells to a patient in need thereof, classified in class 435, subclass 325. Claims 58-61 are allegedly drawn to a composition comprising CD133+/CD34+ cells enriched from umbilical cord blood; mesenchymal stem cells; and a carrier, classified in class 435, subclass 325.

In response to the restriction requirement, Applicants hereby provisionally elect claims 1-57 for continued examination, with traverse. Applicants traverse because it would not pose an undue burden on the Examiner to search both alleged inventions. The two inventions both relate to endothelial generating cells and to mesenchymal cells, so the search of both inventions would be expected to substantially overlap.

The Examiner has also requested election of several species for search purposes only, such that the search will be extended to the other species upon finding the elected species allowable.

With regard to the species election for the relationship of endothelial progenitor cells to the subject, Applicants elect "(b) allogeneic." All pending claims except claim 9 read on this elected species.

With regard to the endothelial progenitor cells, Applicants elect "(h) hemangioblast." All pending claims except claims 44-53 read on this elected species.

With regard to the source of mesenchymal stem cells administered to the subject, Applicants elect "(j) bone marrow." All pending claims except claim 18 read on this elected species.

With regard to the relationship of the mesenchymal stem cells to the subject, Applicants elect "(l) autologous." All pending claims except claim 22 read on this elected species.

With regard to the disorders, Applicants elect "(q) myocardial ischemia." All pending claims read on this elected species.

With regard to the genetic state of endothelial generating cells, Applicants elect "(v) not modified by the introduction of exogenous cDNA." All pending claims except claims 38 and 39 read on this elected species.

With regard to the recombinant polypeptides for expression in cells, Applicants elect "(w) VEGF." All pending claims read on this elected species.

With regard to the recombinant polypeptides for administration to patients, Applicants elect "(b') VEGF." All pending claims read on this elected species.

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Amendment dated October 2, 2006
Reply to Office Action of August 11, 2006

Docket No.: CWRU-P01-046

CONCLUSION

Applicants believe no fee is due with this response in addition to the one-month extension of time fee. However, if an additional fee is due, please charge our Deposit Account No. 18-1945, under Order No. CWRU-P01-046 from which the undersigned is authorized to draw.

Dated: October 2, 2006

Respectfully submitted,

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